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BEFORE THE Federal Communications Commission Washington, DC 20554

In re applications of) MM Docket No. 93-241
DARRELL BRYAN) File No. BPH-920109MA
SBH PROPERTIES, INC.) File No. BPH-920123MD
For a Construction Permit for a New FM Station on Channel 276A (107.3 MHz) in Tusculum, Tennessee	RECEIVED
	APR 1 8 1994
To: The Hon. John M. Frysiak Administrative Law Judge	FEDERAL COMMUNICATIONS COMMISSION OFFICE OF THE SECRETARY

MOTION FOR ACCEPTANCE OF SUPPLEMENT TO OPPOSITION TO SECOND MOTION TO ENLARGE ISSUES

Darrell Bryan ("Bryan"), by his attorneys, hereby moves the Presiding Judge to accept the Bryan Supplement To Opposition which is being filed simultaneously herewith.

In support thereof, the following is shown:

1. In its Reply to the Bryan opposition, SBH Properties, Inc. ("SBH") asserts that the Bryan tower construction estimate submitted with the Bryan opposition is of doubtful validity because the company is owned by an engineer who has no tower construction background and because the estimate may not include various tower costs. SBH also questions the equipment estimate from Hall Electronics on the grounds that the prices for various items of equipment must be for used equipment. Finally, SBH points out that the declaration of Darrell Bryan attached to the opposition was not given under penalty of

perjury.

- 2. The supplement provides the inadvertently omitted declaration under penalty of perjury for the Darrell Bryan declaration. It also provides a declaration from Walter Stone, President of American Aviation, Inc., the company that provided the tower estimate. The declaration addresses the question of Mr. Stone's expertise in tower construction raised by SBH in its reply by pointing out that he has been a Rohn Tower Company distributor since 1978 and has constructed towers throughout the southeast. Finally, the supplement provides a letter from Hall Electronics addressing the question of whether the prices for certain items of equipment are for new or used equipment. The letter states that all items in its proposal are new "unless shown as 'used'".
- 3. Although additional pleadings are not normally accepted beyond the standard pleading cycle, it is submitted that the Bryan supplement should be accepted because SBH makes a serious allegation to which Bryan has not had an opportunity to respond. SBH asserts that Mr. Stone has "no expertise upon which to base a quote", and refers to the Stone tower quotation as a "ploy" because "it appears that Mr. Stone may well have simply been doing Bryan a favor by preparing baseless 'quotes' solely for the purposes of supporting Bryan's Opposition". It would be patently unfair to allow SBH to besmirch the reputation of Mr. Stone with baseless insinuations. In addition, SBH asserts (paras. 24-25) that the Hall Electronics estimate is for used, reconditioned equipment. The Hall Electronics letter submitted with the supplement makes it clear that any used equipment on the earlier list was clearly marked and that all others are new.
 - 4. Acceptance of the supplement will permit Mr. Stone to respond to the charge

that he has engaged in a "ploy" to deceive the Commission, and the proffered documents will be of assistance to the Presiding Judge by clarifying the record. Further, acceptance of the brief supplement will not delay the progress of the hearing in view of the implementation of the comparative hearing "freeze".

Wherefore, in view of the foregoing, it is respectfully submitted that there is good cause for acceptance of the Bryan Supplement to Opposition to Second Petition to Enlarge Issues.

Respectfully submitted,

DARRELL BRYAN

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His Attorneys

April 18, 1994

CERTIFICATE OF SERVICE

I, J. Richard Carr, hereby certify that copies of the foregoing "Motion for Acceptance of Supplement to Opposition to Second Motion to Enlarge Issues" were sent via first class mail, postage prepaid, or as otherwise indicated to each of the following on this 18th day of April 1994:

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Hand Delivery